

Our Reference: CBC-122-C

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Richard C. Wilson and Patrick M. Culpepper  
Serial Number: 09/391,294  
Filing Date September 7, 1999  
Examiner/Art Group Unit: R. Canfield/3635  
Confirmation No. 8383  
Title: CORNER POST SUPPORT MEMBER

SUPPLEMENTAL COMMUNICATION

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450  
Sir:

If any charges or fees must be paid in connection with the following communication, they may be paid out of our Deposit Account No. 25-0115.

This communication is being submitted to inform the United States Patent and Trademark Office of any concurrent proceedings in which Patent Numbers 5, 542, 222 and 5,664, 376 are involved pursuant to 37 CFR 1.178(b). Enclosed with this communication is the following document which may be material to patentability in this matter:

Complaint and Demand for Jury Trial.

Other relevant documents will be submitted for the subject reissue declaration as they are available.

Respectfully submitted,

YOUNG, BASILE, HANLON, MacFARLANE, WOOD &  
HELMHOLDT, P.C.

  
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Dated: October 24, 2008

DMG/ljo

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

PROGRESSIVE FOAM TECHNOLOGIES, INC.,      )  
  )  
Plaintiff,                                      )  
  ) Civil Action No.  
v.    )  
  ) Judge  
MITTEN INC.,                                    )  
  )  
and,    )  
  )  
MITTEN VINYL INC.,                            )  
  )  
Defendants.                                    )

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Progressive Foam Technologies, Inc., by its attorneys and for its Complaint, alleges as follows:

**THE PARTIES**

1. Plaintiff, Progressive Foam Technologies, Inc. ("Progressive Foam Technologies"), is an Ohio corporation having a place of business at 6753 Chestnut Ridge Road NW, Beach City, Ohio 44608. Among other things, Progressive Foam Technologies, is a designer, developer and manufacturer of foam backed building products, such as insulated siding and corner post support members. Included in its product line is its proprietary Fullback® Thermal Support System which is a foamed, structural insulation backer that fits behind and fully supports the contour of vinyl siding

and corner posts. The foamed structural insulation backer may be laminated or alternatively fixed to the rear surface of the vinyl siding, etc. The resulting laminated and/or foamed-back insulated vinyl siding, etc., products exhibit enhanced energy efficiency, dent resistance, warping or sagging inhibition and other structural support characteristics.

2. Upon information and belief, Defendant, Mitten Inc. ("Mitten"), is a Canadian corporation having a place of business at 70 Curtis Avenue, Paris, Ontario N3L 3E1. Defendant Mitten manufactures and sells building products, including insulated vinyl siding that are utilized throughout North America, including the United States.

3. Upon information and belief, Defendant, Mitten Vinyl Corporation ("Mitten Vinyl"), is an Ohio corporation having a place of business at 3252 Bridgestone Court, Cincinnati, Ohio 45248-4002. Defendant Mitten Vinyl is a related entity of Mitten and sells and/or distributes Mitten's building products in the United States, including Ohio.

#### **JURISDICTION AND VENUE**

4. Federal question jurisdiction is conferred pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Venue in this Court is based upon 28 U.S.C. §§ 1391 and 1400(b).

## **CLAIM FOR PATENT INFRINGEMENT**

6. On February 29, 2000, United States Letters Patent Number 6,029,415, entitled "Laminated Vinyl Siding" (hereinafter "the '415 patent"), was duly and legally issued to ABCO, Inc., and subsequently reassigned to Progressive Foam Technologies. A copy of the '415 patent is attached to this Complaint as Exhibit A.

7. On March 6, 2001, United States Letters Patent Number 6,195,952, entitled "Laminated Vinyl Siding" (hereinafter "the '952 patent"), was duly and legally issued to ABCO, Inc., and subsequently reassigned to Progressive Foam Technologies. A copy of the '952 patent is attached to this Complaint as Exhibit B.

8. On August 6, 1996, United States Letters Patent Number 5,542,222, entitled "Corner Post Support Member" (hereinafter "the '222 patent"), was duly and legally issued to ABCO, Inc., and subsequently reassigned to Progressive Foam Technologies. A copy of the '222 patent is attached to this Complaint as Exhibit C.

9. On September 9, 1997, United States Letters Patent Number 5,664,376, entitled "Corner Post Support Member" (hereinafter "the '376 patent"), was duly and legally issued to ABCO, Inc., and subsequently reassigned to Progressive Foam Technologies. A copy of the '376 patent is attached to this Complaint as Exhibit D.

10. Upon information and belief, Defendants, Mitten and Mitten Vinyl, have infringed and continue to infringe one or more claims of the '415, '952, '222, or '376 patents by their manufacture, use, offer for sale and/or sale of certain building products, including, but not limited to, laminated insulated siding and/or corner post support members.

11. Upon information and belief, Defendants, Mitten and Mitten Vinyl, have actively induced and currently are actively inducing others to infringe one or more claims of the '415, '952, '222, or '376 patents, through their sale of building products.

12. Upon information and belief, Defendants, Mitten and Mitten Vinyl, have contributorily infringed and currently are contributorily infringing the '415, '952, '222, or '376 patents, by their offer for sale and sale of building products.

13. Upon information and belief, Defendants, Mitten's and Mitten Vinyl's infringement, inducement of infringement and contributory infringement have been and continue to be willful.

14. As a result of Defendants, Mitten's and/or Mitten Vinyl's actions, Progressive Foam Technologies has suffered and continues to suffer substantial injury, including irreparable injury, and will result in damages to Progressive Foam Technologies, including loss of sales and profits, which Progressive Foam Technologies

would have made but for the infringement by Defendants, Mitten and Mitten Vinyl, unless Defendants, Mitten and Mitten Vinyl, are enjoined by this Court.

**WHEREFORE**, Progressive Foam Technologies demands judgment against Defendants, Mitten and Mitten Vinyl, and/or their customers as follows:

A. That a judgment be entered that Defendants, Mitten and Mitten Vinyl, and/or their customers have infringed, actively induced others to infringe, and/or contributorily infringed United States Letters Patent Nos. 6,029,415; 6,195,952; 5,542,222; and, 5,664,376.

B. That Defendants, Mitten and Mitten Vinyl, their purchasers, customers, agents, sales representatives, distributors, servants and employees, attorneys, affiliates, subsidiaries, successors and assigns, and any and all persons or entities acting at, through, under or in active concert or in participation with any or all of them, be enjoined and restrained preliminarily during the pendency of this action, and thereafter permanently, from infringing, actively inducing others to infringe, and/or contributorily infringing United States Letters Patent Nos. 6,029,415; 6,195,952; 5,542,222; and, 5,664,376.

C. That a judgment be entered that Defendants, Mitten and Mitten Vinyl, be required to pay over to Progressive Foam Technologies all damages sustained by Progressive Foam Technologies due to such patent infringement and that such damages be trebled pursuant to 35 U.S.C. § 284 for the willful acts of infringement complained of herein.

D. That this case be adjudged and decreed exceptional under the 35 U.S.C. § 285 entitling Progressive Foam Technologies to an award of its reasonable attorney fees and that such reasonable attorney fees be awarded.

E. That Progressive Foam Technologies be awarded its costs and prejudgment interest on all damages.

F. That Defendants, Mitten and Mitten Vinyl, be required to file with the Court within thirty (30) days after entry of final judgment of this cause a written statement under oath setting forth the manner in which Defendants have complied with the final judgment.

G. That Progressive Foam Technologies be awarded such other and further relief as the Court deems just and equitable.

**JURY DEMAND**

Progressive Foam Technologies, Inc. hereby demands and requests trial by jury of all issues raised that are triable by jury.

Respectfully submitted,

/s/ Richard M. Klein

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Progressive Foam Technologies, Inc.

**Certificate of Service**

I hereby certify that on October 8, 2008, a copy of the foregoing **Complaint and Demand for Jury Trial** was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Richard M. Klein

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